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SUBJECT: RUSSIA 2009 SPECIAL 301 IPR REVIEW

REF: A. STATE 08410

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SUMMARY

[1](#)1. Consistent with U.S. industry recommendations, Embassy Moscow recommends that the USG maintain Russia's Priority Watch List status for the 2009 Special 301 IPR Report. There has been slow but steady progress on some IPR legal and enforcement issues during the past year. However, Russia has made insufficient progress in several key areas and much remains to be done.

[1](#)2. On the positive side, Russia has made strong progress in combating software piracy, as recognized by the Business Software Alliance. The music industry has welcomed Russia's joining two WIPO treaties regulating recordings and copyrights. In addition, the Moscow City Government has recently banned DVD/CD kiosks in the public transport system and pedestrian spaces, eliminating one major nexus of retail trade in pirated videos and music.

[1](#)3. However, on the negative side, Russia is years behind in implementing the fundamental IPR legislative and regulatory commitments that it undertook in the November 2006 U.S.-Russia IPR Side Letter, signed as part of Russia's WTO accession process. Likewise, the IPR enforcement record has been inconsistent, and IPR criminal convictions declined in the past 12 months. The GOR has neglected several other serious IPR issues, including growing piracy problems in Russia's regions, and corruption among law enforcement officials, some of whom reportedly benefit from the trade in pirated goods. In addition, there is a clear lack of leadership on the Russian side to advance our bilateral IPR agenda. END SUMMARY.

Positive Trends

[1](#)4. In several areas, Russia made improvements in the IPR regulatory and enforcement environment in the last 12 months, thanks to a combination of USG engagement, rising GOR awareness of IPR issues, increasing industry (both foreign and domestic) cooperation and lobbying, and rights holders' proactive efforts to protect their own intellectual property. Following is a summary of the positive highlights from 2008.

Protection for Film and Music Industries

15. In 2008, the music industry welcomed Russia's announcement to join the WIPO Performance and Phonograms Treaty (WPPT) and the WIPO Copyright Treaty (WCT), thus fulfilling one of Russia's commitments in the U.S.-Russia IPR Side Letter. The film industry has seen growth in sales of legitimate product, with 82 million legal DVDs sold in Russia in 2008, up from 67 million in 2007. Despite the financial crisis, the Motion Picture Association of America (MPAA) remains optimistic about Russia as a significant growth market for theatrical film releases. Box office sales in Russia topped \$800 million in 2008 and are expected to reach \$1 billion by 2010.

16. Companies that have set up their own manufacturing operations in Russia, rather than solely importing their merchandise, report success from cooperating with the Russian police to fend off counterfeiters. For several years, however, MPAA members have reported that even some licensed Russian optical disc plants run their production line at night to make unauthorized copies, which are then sold illegally. To root out this problem, some U.S. movies studios, including Disney, have moved in 2008 and 2009 to end their licensing agreements with Russian optical disc manufacturers, and instead are establishing their own facilities within Russia to maintain a higher level of control.

Some Positive Enforcement Actions

17. While Russia's enforcement efforts are still very spotty (see below), in December 2008, a Moscow regional court sentenced 7 people, including the plant director, to 3-6 years in prison. This was the first time that a Russian court ever imposed a prison sentence on a plant director. While prosecution and conviction of commercial scale pirates is very inconsistent, enforcement of a 2008

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ban on cam-cording in movie theaters has contributed to a decrease in the availability of pirated DVDs. In addition, in 2009, the City of Moscow took a major step to curb piracy by banning all sales of DVDs and CDs in Metro stations as of February 1 and in pedestrian underpasses as of March 1, 2009.

Protection for IT and Hi-Tech

18. The estimated software piracy rate in Russia dropped the most out of 108 countries examined by the Business Software Alliance (BSA) in May 2008. The BSA attributed the decrease in piracy in Russia to software legalization programs, government engagement, user education and enhanced enforcement. For high tech companies, one of the prime reasons for investing in the Russian market has been an improved IPR environment for software, along with the high quality and creativity of Russian programmers. Rights holders' collaboration with police is key to protecting against counterfeit software. During the last year, Microsoft alone brought over 1,500 cases to the attention of the Ministry of Internal Affairs (MVD) for investigation.

IPR Training

19. The GOR displayed an increased willingness to participate in USG, EU and industry sponsored IPR training programs over the last 12 months. Russian authorities, noting that a fully functioning economy requires attention to IPR, have also expressed greater interest in exchanges with technical experts. Russian administrative and judicial review bodies are beginning to become active in protecting IPR, and the number of judges with relevant expertise, though still small, is expanding. In 2008, the USG collaborated with the EU on an IPR educational seminar for 150 federal judges. In 2009, the U.S. Patent and Trademark Office (USPTO) plans to sign a Memorandum of Understanding with the Russian Federal Service for Intellectual Property, Patents, and Trademarks (Rospatent) for cooperation on training and information sharing on technical IPR issues. From the industry side, Microsoft has led the

effort to educate law enforcement officials and has conducted regional programs to train 1,200 Russian police officers and investigators.

Negative Trends

¶10. Despite the positive trends noted above, Russia's efforts in IPR regulation and enforcement have lagged on several fronts. Russia needs to complete legislation to bring Russia's legal and regulatory framework into conformity with international standards. Russia's inconsistent enforcement record, failure to curb piracy at notorious markets, lack of political leadership on IPR issues, and growing piracy problems in the regions, are all telltale signs of the endemic IPR problem.

Legislative Reform behind Schedule

¶11. In January 2008, Part IV of the Russian Civil Code was enacted, and replaced most of Russia's previous civil IPR legislation with a single code. While Part IV improves some aspects of IPR protection (e.g., in the area of geographical indications and trademarks), it still contains some provisions that are inconsistent with the WTO TRIPS Agreement and other international agreements. The GOR is slowly beginning to make good on promises it made in the U.S.-Russia IPR side letter to reform Part IV and make it consistent with international IPR standards. The State Duma (Russia's parliament) passed the first and second readings of needed amendments to Part IV in late 2008 and early 2009, but no date has been scheduled for the third and final reading of these amendments.

¶12. The GOR also has not yet passed an amendment granting ex-officio authority to customs officials to temporarily seize suspected counterfeit goods, despite a commitment in the IPR Side Letter to pass such legislation by June 2007. After going through a first Duma reading in late 2008, the ex-officio amendment has stalled in the Duma, reportedly over concerns of possible abuse of power by customs officers.

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¶13. As for the Law on Medicines, the GOR has not yet even submitted to the Duma draft legislation to protect pharmaceutical and chemical test data.

¶14. Likewise, Russia committed in November 2006 that by June 2007 it would establish a clear structure for the operation and accreditation of legitimate societies to collect royalties on behalf of music producers. Unfortunately, a GOR tender to accredit the collecting societies was postponed in 2008 and has not yet been rescheduled.

Enforcement Record is Spotty

¶15. Russia's record of enforcement of IPR crimes has been very inconsistent. The frequency of raids and rights holders' cooperation with police increased over the past 12 months. However, in some cases, seized production lines and equipment used for IPR infringing activities ended up back in circulation, allowing pirates to continue their illegal activities either in another location or under a different corporate umbrella. The GOR has not yet shared 2008 official statistics on IPR enforcement with the Embassy, but the Russian Anti-Piracy Organization (RAPO) told us that 6,885 criminal cases were initiated in 2008 under on Article 146 of the Criminal code (which provides for the punishment of IPR crimes). Some 4,858 cases were sent to court and 3,482 cases led to some type of penalty, conviction or fine. The Russian Ministry of the Interior (MVD) reported a total of 4,088 criminal convictions in 2007, 7,423 in 2006, and 2,924 in 2005.

Illegal Downloading Remains Problematic

¶16. Online piracy and downloading of illegal music and other media remains an acute problem in Russia. Several Russian-based websites illegally offer songs, films and software for download, despite the fact that the GOR closed down 101 illegal websites offering pirated material in 2008, according to the MVD's Computer Crimes Unit. The U.S. copyright industry acknowledges that this MVD Unit is slowly beginning to take an interest in pursuing meaningful criminal cases against internet pirates.

¶17. Our software industry contacts are dismayed by a new regulation with regard to the operational activities of police, which mandates that the police can no longer independently conduct raids on offices suspected of using pirated software, and may only raid offices if they receive sufficient evidence from rights holders. While the rule may have been intended to reduce police corruption, the lack of independent authority for the police to conduct raids will likely prove to be a hindrance to IPR enforcement efforts.

¶18. In addition, Russian law enforcement organs have not been transparent in regard to which unit of law enforcement within the MVD or Federal Security Services (FSB) has primary responsibility for policing web-based crimes. However, it is clear that Internet piracy is low on the priority list for Russian law enforcement organs among the broad panoply of on-line crimes such as child pornography, money laundering, financial scams, and organized crime activities.

Notorious Markets for Pirated Goods

¶19. Pirated goods remain widely available to consumers at several of Russia's leading electronics markets, despite some progress by the Russian authorities in Moscow and St. Petersburg in curbing the volume of pirated goods sales at some of them (Ref B). In Moscow, pirated discs are still available, but less overtly displayed than in previous years, at the upscale Gorbushka consumer electronics market. Pirated goods are more widely and openly available at the working class Savelovskiy electronics market in Moscow.

¶20. In St. Petersburg, repeated police raids have dramatically reduced the level of piracy sales at the Yunona market, but RAPO estimates that sales of pirated material still account for 60% of all optical disc sales in the city. Having been pushed out of big shops in downtown St. Petersburg and from the Yunona market, the pirates now channel their products through smaller open-air markets. The area around the Lesnaya metro station is particularly well-known for its high sales volume of pirated discs.

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¶21. Both Moscow and St. Petersburg saw considerable growth last year in the number of mobile pirate sellers. These vendors usually have small folding tables, which they put up near metro stations, in underground passages and even in yards in residential areas. Other mobile sellers troll the subway systems offering discs to passengers. While these traders have been selling various kinds of consumer goods and print materials for quite some time, it was only recently that they began to offer counterfeit optical discs.

Serious Corruption Problem

¶22. Corruption is widely acknowledged by the Russian authorities as one of the most serious challenges to the country's economic development. In the area of IPR, rights holders and industry associations have told us that local law enforcement units, including individual police precincts, are likely involved in some selling of pirated goods, taking kickbacks and bribes from pirates to turn a blind eye to enforcement, or in some cases, reintroducing seized pirated goods into the stream of commerce through distribution channels that are protected by local police units.

----- Lack of Political IPR Leadership -----

¶23. The political leadership on IPR remains unclear, which makes it difficult to advance our bilateral IPR agenda. Since President Medvedev assumed office in May 2008, no senior Russian official has shown significant interest in IPR regulatory and enforcement questions. Coordination among the various ministries and agencies with IPR responsibilities is spotty. Many GOR officials view IPR as purely a WTO issue. Since Russia was not able to complete WTO accession talks during 2008, the urgency to improve Russia's legal and enforcement IPR framework has decreased.

¶24. The general lack of interest is compounded by the fact that the current Minister of Culture, appointed shortly after Medvedev's inauguration, has not made any efforts to address IPR issues and has not designated a Russian co-chair for the U.S.-Russia IPR Working Group, which has consequently languished. While the IPR Side Letter stated that the Working Group was supposed to meet quarterly, it has not met in a year, largely due to the lack of leadership and interest on the Russian side.

----- Growing Piracy in Russia's Regions -----

¶25. Rights holders and anti-piracy organizations tell us that Russia's regions are becoming "hotbeds" for pirated goods. RusBrand, a brand-protection association whose members include both Russian and foreign consumer goods manufacturers, reported to us that in some rural areas, counterfeits may be the only goods available. Similarly, optical disc piracy is moving out of Russia's largest cities, where police tend to be savvier about IPR crimes, to regions where there is less police presence and smaller disc "burning" operations can be easily established. Russia's law enforcement organs have not yet developed an effective strategy for dealing with these regional shifts in piracy production and sales.

----- CONCLUSION -----

¶26. Post recommends maintaining Russia's Priority Watch List status as we continue to press for implementation of Russia's IPR Side Letter commitments and keep the pressure on the GOR to increase its focus on IPR protection and enforcement.

BEYRLE